

Message Text

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ACTION L-02

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E.O.11652: N/A

TAGS: EINV, PE

SUBJ: CALVO CLAUSE AND RELATED PROVISIONS

REFS: STATE 024007, LIMA 9579, LIMA 9615, LIMA 9647

1. ARTICLE 17 OF PERUVIAN CONSTITUTION OF 1933 READS,
IN PART, "COMMERCIAL COMPANIES, EITHER LOCAL OR FOREIGN,
ARE SUBJECT, WITHOUT RESTRICTION, TO THE LAWS OF THE
REPUBLIC. IN EVERY CONTRACT BY THE STATE WITH FOREIGNERS
....THERE MUST BE AN EXPRESS SUBMISSION BY THE SECOND PARTY
TO THE LAWS AND COURTS OF THE REPUBLIC AND ITS
RENUNCIATION TO ANY DIPLOMATIC CLAIM."

2. THIS ARTICLE WAS CENTRAL POINT OF RECENT CONTROVERSY
(SEE LIMA REFTELS) WHEN LIMA BAR ASSOCIATION CLAIMED THAT
RECENTLY SIGNED CONTRACTS FOR CONSTRUCTION OF OIL
PIPELINE IN NORTHERN PERU WERE UNCONSTITUTIONAL AS
THERE WERE FOREIGN ARBITRATION CLAUSES INCLUDED IN THEM.
GOP POSITION WAS THAT SECOND SENTENCE OF ARTICLE IS
MODIFIED BY FIRST. THUS, PROHIBITION AGAINST RENUNCI-
ATION OF PERUVIAN SOVEREIGNTY DOES NOT APPLY WHEN
COMPANIES AND THEIR ACTIVITIES ARE DEEMED TO BE
OUTSIDE OF PERUVIAN TERRITORIAL LIMITS. ARTICLE 17
WAS INVOKED BY MILGOVE AFTER ITS OCTOBER 1968 EXPROPRIATION
WITHOUT COMPENSATION OF INTERNATIONAL PETROLEUM COMPANY.
IPC WAS DENIED ANY RECOURSE OUTSIDE PERUVIAN COURTS.

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3. MILGOV FOLLOWS TRADITIONAL PERUVIAN POSITION OF
OPPOSITION TO ANY TYPE OF FOREIGN INVESTMENT INSURANCE
FOR WAR RISKS OR EXPROPRIATION. OPIC HAS NOT WRITTEN
INSURANCE IN PERU FOR SIX YEARS, AND BEFORE THAT ONLY
FOR GUARANTEE OF CONVERTIBILITY, ALTHOUGH AN OPIC
AGREEMENT WITH PERU HAS NEVER BEEN TERMINATED.

4. COMMENT: PERU ADHERES CLOSELY TO "CALVO DOCTRINE"
BUT, AS NOTED IN PARA 2 ABOVE, WHEN IT DEEMS ITS NATIONAL
INTEREST GREATLY AFFECTED, THIS ADHERENCE MAY BE
MODIFIED.

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